39TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 42.

MIAMI INDIANS OF INDIANA.

MARCH 27, 1866.—Laid on the table and ordered to be printed.

Mr. WINDOM, from the Committee on Indian Affairs, made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the resolution directing an examination, and report by bill, or otherwise, who constitute the tribe of Miami Indians of Indiana, respectfully ask leave to report:

That they have had the subject under consideration, and after a careful investigation of the facts and the law appertaining thereto, they are satisfied no further legislation is necessary on the subject. Your committee are of the opinion that the tribe of Miami Indians of Indiana consists of the persons named in the list or pay-roll, as added to by the Secretary of the Interior, under the act of June 12, 1858. In confirmation of this opinion the committee beg leave to append hereto the opinion of the Attorney General of the United States, given under date of October 26, 1865, and ask that the same may be printed as a part of this report:

ATTORNEY GENERAL'S OFFICE,
October 26, 1865.

SIR: In the treaty betwixt the United States and the Miami Indians, (see United States Statutes at Large, volume 10, page 1099,) it is provided in the Senate amendments, "That no person other than those embraced in the corrected list agreed upon by the Miamies of Indiana, in the presence of the Commissioner of Indian Affairs in June, 1854, comprising 302 names, as Miami Indians of Indiana, shall be the recipients of payments, annuities, commutation moneys and interest, thereby stipulated to be paid to the Miami Indians of Indiana, unless other persons shall be added to said list by the consent of the said Miami Indians of Indiana, obtained in the council according to the custom of their tribe."

By the 3d section of the act of June 12, 1858, (sec. 11, Statutes at Large, 332,) it is enacted, "That the Secretary of the Interior be, and he is hereby, authorized and directed to pay to such persons of Miami blood as have been heretofore excluded from the annuities of the tribe since the removal of the Miamies in 1846, and since the treaty of 1854, and whose names are not included in the supplement to said treaty, their proportion of the tribal annuities from which they have been excluded; *and he is also authorized and directed to enrol such persons upon the pay list of said tribe, and cause their annuities to be paid to them in future.*"

In October of that year, pursuant to the authority so given, the Secretary of the Interior directed that the names of 68 persons should be added to the roll of the Miami Indians of Indiana, and on the 12th of November, 1862, the Secretary added other names for participation in the then future payments to the Miami Indians of Indiana, and the persons whose names were so added in 1858 and 1862 have regularly received their annuities, but the tribe in council

never did, according to their custom, consent to the addition of those names or to their being paid.

In the act of March 3, 1865, (see Sessions Acts, 1864 and 1865, page 546,) there are appropriated, "for interest on two hundred and twenty-one thousand two hundred and fifty-seven dollars and eighty-six cents, uninvested, at five per centum, for Miami Indians of Indiana, per Senate's amendment of 4th article treaty June 5, 1864, eleven thousand and sixty-two dollars and eighty-nine cents."

In your letter of 12th of October you ask me whether, in view of the treaty and legislation aforesaid, any part of the amount appropriated by the act of March 3, 1865, can be paid to persons other than those embraced in the corrected list aforesaid, and to the increase of families embraced in said list?

In order to answer this question, it must be considered, first, whether the act of 1865 repeals or modifies the act of 1858; and, secondly, if it does not repeal the act of 1858, whether payment must be made to the persons named in the corrected list mentioned in the treaty and representations only, or to them and the persons whose names have been added by the Secretary of the Interior under the authority given in the act of 1858.

As to the first branch, so far as the Miami Indians are concerned, the act of the 3d March, 1865, is one of appropriation only; such an act cannot, by construction or implication, be made to repeal or modify previous permanent legislation. The act of 1858 is not a simple act of appropriation, but expressly authorizes and directs the Secretary of the Interior to add other names to the corrected list mentioned in the treaty, and commands that the persons so added shall be upon the pay list, and that their annuities be paid to them in the future. The act of 1865 does not, in terms, repeal the act of 1858, nor are the provisions of the two in such positive conflict that both cannot stand. When the act of 1865 was passed, Congress not only had the treaty before it, but the act of 1858 also, and the fact that the authority given under that act had been exercised. The reference in the act of 1865 to "the Senate's amendment to the 4th article treaty June 5, 1854," was to show the reason for and object of the appropriation.

An intention to repeal or modify the act of 1858, and reverse the action of the government thereunder, cannot be inferred from such a reference in such an act.

The act of 1865 does not repeal the act of 1858.

As to the second branch, a treaty is a contract betwixt powers independent, and, for the purposes of the treaty, equal under our form of government. Treaties are made by the President and Senate. Some treaties require legislation by Congress before they can be executed. This is known to the contracting parties, as money cannot be drawn from the treasury except under an act of appropriation. All treaties that cannot be performed without the payment of money must be executed after Congress shall act, and then in the mode, and only in the mode, prescribed by Congress. The Executive and the judiciary are powerless to execute such treaties in any other way. It is by virtue of the act of Congress, and not of the treaty, that the money is obtained from the treasury.

A treaty is a contract of the very highest character, and invested by the Constitution with the dignity of an act of Congress, but with a character no higher and a dignity no greater than an act of Congress made in pursuance of the Constitution. A right which is vested under either cannot be divested by an act of Congress, and yet it is in the power of Congress, by refusing the necessary appropriations, to defeat the performance of a treaty. Treaties made by the President and the Senate, that require legislation to execute them, are thus brought under the consideration and are subject to construction by Congress. When Congress has considered and construed them, the several depart-

ments are bound by such construction. The President and Senate, who made the treaty, join in the act which gave it construction.

Of the construction given to a treaty by Congress, no one has a right to complain except the power with which the treaty was entered into, and such complaint must be made to the political power of the government, and not to the organ charged by Congress with the execution of an act.

These views are sustained, as I think, by the cases of James Turner *vs.* The American Baptist Missionary Union, 5th McLean, 344, and Charles G. Taylor et al. *vs.* Marcus Morton, 2 Curtis, 454.

I am therefore of the opinion that payment must be made according to the list or pay-roll as added to by the Secretary of the Interior under the act of June 12, 1858.

I am, sir, very respectfully, your obedient servant,

JAMES SPEED,
Attorney General.

Hon. JAMES HARLAN,
Secretary of the Interior.